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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/204,523	12/03/1998	ANDREW FRANSMAN	97-823	5617

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EXAMINER

BROWN, RUEBEN M

ART UNIT	PAPER NUMBER
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2611

DATE MAILED: 11/23/2001

17

Please find below and/or attached an Office communication concerning this application or proceeding.

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# Office Action Summary

Application No.  
09/204,523

Applicant(s)  
Fransman, et al

Examiner  
Reuben Brown

Art Unit  
2611



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Aug 27, 2001
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-8, 10-25, and 27 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10-25, and 27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some\* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 20) ☐ Other:

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## **DETAILED ACTION**

### ***Request for Continued Examination***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/27/2001 has been entered.

### ***Response to Arguments***

2. Applicant's arguments with respect to claims 1, 10, 17 & 21 have been considered but are moot in view of the new ground(s) of rejection.

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*Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clark, (U.S. Pat # 5,383,112), in view of Nouri, (U.S. Pat # 6,088,816) and Richie, (U.S. Pat # 5,790,523).

Considering amended claim 1, the claimed master scheduler arranged to control a near video on demand system comprising a schedule management system arranged to receive and validate a schedule reads on the operation of master scheduler 20, and serving computer 15, (col. 2, lines 55-67; col. 3, lines 1-11). Both master scheduler 20 and serving computer 15 may be implemented as personal computers and are enabled to receive & validate a NVOD programming schedule, (col. 4, lines 29-38; col. 8, lines 51-68). Specifically, the claimed feature of receiving and validating a schedule is broad enough to read on an operator using the Schedule Manager Segment 700 in order to create a schedule, and wherein the instant schedule is validated by being accepted and put into operation by the computer, as taught by Clark (col. 13, lines 49-68; col. 15,

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lines 17-32). Moreover the system in Clark 'validates' the schedule by checking it against certain required parameters and providing the operator with various messages when the instant created schedule is not in a valid form to be adopted, see col. 14, lines 10-24.

The claimed content manager system arranged to monitor and control the loading of assets into a video server according to the validated schedule, wherein the assets include video content scheduled for staggered transmission to subscribers of the NVOD system using a plurality of channels is met by Clark (col. 4, lines 25-40; col. 5, lines 17-23).

Regarding the amended claimed feature of the content manager including a GUI configured to allow an administrator to view a selected asset using a test channel dedicated for testing the selected asset, the master scheduler 20 of Clark provides a GUI for an operator to edit and modify a programming transmission schedule. Nevertheless, Nouri discloses a means for an operator to view the status or condition of various assets at a server, (Abstract, lines 1-4; col. 3, lines 45-65; col. 6, lines 51-67). It would have been obvious for one of ordinary skill in the art at the time the invention was made, to modify Clark, with the disclosure of Nouri, providing operators with a visual/graphical display of the status of various components of the server, at least for the desirable improvement of enabling the operator to more readily and efficiently adjust parameters of the system.

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Regarding the amended claimed feature wherein the test channel is solely dedicated for testing the selected asset, Clark & Nouri do not teach such a feature. Ritchie is directed to a testing facility for testing a plurality of different assets, i.e upstream receiver modules (URM) 802 and downstream transmitter modules (DTM) 804, at a CATV headend interface unit, see col. 25, lines 62-67 thru col. 26, lines 1-15 & col. 28, lines 52-60, and is therefore in the same field of endeavor as Clark & Nouri. In particular, Ritchie teaches that when testing the various modules, the test control module (TCM) 800, utilizes a particular RF test frequency, i.e channel which only used for testing, see col. 26, lines 40-55 & col. 27, lines 12-50. It would have been obvious for one ordinary skill in the art at the time the invention was made, to modify the combination of Clark & Nouri with the teachings of Ritchie wherein a particular channel is solely used for testing an asset, at least for the known desirable of advantage of avoiding the mixing of data signals with test signals.

Considering claim 2, Clark teaches that an operator utilizes the Schedule Manager software on one or more computers 15, 20, 64 or 66 in order to create monthly, weekly or daily schedules. The menu system utilized by the operator reads on the GUI based administrator recited in the instant claim.

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Considering claim 3, Fig. 1 of Clark shows the Master Scheduler 20, as a separate entity from the video server 11. Also, Clark teaches that at least the weekly schedule may be edited and modified, see col. 13, lines 10-65.

5. Claims 4-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clark, Nouri & Ritchie, in view of Gardner, (U.S. Pat # 5,583,995).

Considering claims 4-7, Clark discusses an operator manually checking and updating the video storage/retrieval devices at a server, (col. 27, lines 1-25). Even though Clark does not specifically discuss bandwidth and channel optimization algorithms, at the time the invention was made such technology was well known in the art. In particular, Gardner provides a standard teaching of system which tracks configuration parameters of a headend and accordingly, makes dynamic adjustments and reallocations of servers assets, (col. 1, lines 58-65; col. 4, lines 14-58; col. 11, lines 61-68; col. 13, lines 42-55). It would have been obvious for one of ordinary skill in the art at the time the invention was made to modify Clark, with a server reconfiguration algorithm, for the desirable benefit of a more efficient video delivery system, as taught by Gardner.

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Considering claim 8, Nouri discusses a GUI in order to query the status of servers on the system, (col. 6, lines 51-67).

6. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Clark, in view of Davis, (U.S. Pat # 5,576,755), and further in view of Muratani, (U.S. Pat # 6,119,109).

Considering claim 10, the claimed elements of a near video on demand system, which corresponds with subject matter mentioned above in the rejection of claims 1-2, are likewise rejected. However, Clark does not teach receiving an EPG and a schedule from a schedule provider. Nevertheless, Davis provides a teaching wherein an EPG which contains transmissions schedules at least for NVOD programming is provided from a central location to a plurality of CATV headends, (col. 7, lines 25-30; col. 29, lines 1-21). It would have been obvious for one of ordinary skill in the art at time the invention was made, to modify Clark by enabling the master scheduler at the headend/server to receive a schedule from a remote schedule provider, at least for the known desirable advantage of promoting a more unified system wherein the same programming schedule may be efficiently supplied to a plurality of headends, as taught by Davis.

As for the amended claimed feature of allowing the administrator to change prices for a schedule based on a trait of a program within the schedule, neither Clark nor Davis specifically



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teach changing the prices for the video programs based on a trait. Nevertheless, clearly at the time the invention was made, Pay-per-View and Video on Demand systems charged different prices for various movies and/or events which subscribers order. Such a feature would be essential to the operation of such services, since it would be unreasonable to charge the same prices for all movies and/or events regardless of their demand, nature of content, time of viewing, etc. In particular Muratani discloses an information distribution system, wherein subscribers are enabled to retrieve a variety of content such as movies, music video, electronic newspapers or books, etc, (col. 3, lines 59-62; col. 10, lines 1-15). Muratani teaches several algorithms for deriving the billing prices for the varied content. The billing prices are generated as a function of the attributes of the content, which may correspond with particular billing methods, (col. 5, lines 15-45; col. 10, lines 54-67; col. 12, lines 30-55; col. 15, lines 25-30). It would have been obvious for one ordinary skill in the art at the time the invention was made, to modify the combination of Clark & Davis, with the well known technique of charging different prices, based on the content of VOD/NVOD movies or events as taught by Muratani (col. 3, lines 45-65), for the well known business principle of charging for services based upon their actual or perceived value.

7. Claims 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clark, Davis & Muratani, in view of Gardner.

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Considering claims 11-14, Clark discusses an operator manually checking and updating the video storage/retrieval devices at a server, (col. 27, lines 1-25). Even though Clark does not specifically discuss bandwidth and channel optimization algorithms, at the time the invention was made such technology was well known in the art. In particular, Gardner provides a standard teaching of system which tracks configuration parameters of a headend and accordingly, makes dynamic adjustments and reallocations of servers assets, (col. 1, lines 58-65; col. 4, lines 14-58; col. 11, lines 61-68; col. 13, lines 42-55). It would have been obvious for one of ordinary skill in the art at the time the invention was made to modify Clark, with a server reconfiguration algorithm, for the desirable benefit of a more efficient video delivery system, as taught by Gardner.

8. Claims 17-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clark & Davis, in view of Ritchie.

Considering claim 17, the claimed method for controlling a NVOD system which corresponds with subject matter mentioned above in the rejection of claim 10, are likewise rejected. As for the amended claimed recitation of loading assets into a video server via group of channels according to a finalized schedule, the claimed feature reads on the combination of Davis. However, Davis does not teach the amended claimed feature wherein at least one of the group of channels is a test channel, dedicated solely for the purpose of testing. Nevertheless, Ritchie

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provides a teaching wherein a downstream transmitter module (DTM) 804, has two RF output channels, a main RF channel and test RF channel. This RF test channel is solely utilized for communication between the TCM 800, which reads on the amended claimed feature. It would have been obvious for one ordinary skill in the art at the time the invention was made, to modify Clark with the teachings of Ritchie wherein a particular channel is solely used for testing an asset, at least for the known desirable of advantage of avoiding the mixing of data signals with test signals.

Considering claim 18, Clark teaches maintaining an inventory of storage/retrieval device, (col. 16, line 49-68).

9. Claims 21-25 & 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clark, Davis & Ritchie as applied to claim 17 above, and further in view of Gardner.

Considering amended claim 21, the method steps for validation of scheduling information which corresponds with subject matter mentioned above in the rejection of claim 17, are likewise rejected. The claimed step of receiving an asset from an asset provider is broad enough to read on one or more video storage/retrieval means being added to a video server, which is necessarily included in Clark. Even though Clark does not specifically discuss bandwidth and channel

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Considering claim 24, Official Notice is taken that at the time the invention was made, it was well known to limit the viewing or playing of video on demand services to subscribers based on several parameters, including the timeliness of the data. It would have been obvious for one of ordinary skill in the art at the time the invention was made, to modify the combination of Clark, Davis & Gardner, inhibiting the transmission/reception of video programming based on the timeliness of the instant video program, at least for the desirable advantage of a more efficient system which only offers programming to viewers which is currently available.

Considering claim 25, the combination of Clark (col. 14, lines 1-25) & Davis (col. 29, lines 1-25) reads on the claimed feature of receiving a program guide information and comparing it to scheduling information.

Considering claim 27, Clark receives, maintains and updates billing/pricing information, (col. 4, lines 34-37; col. 8, lines 35-45).

10. Claims 15-16 & 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clark, Davis, Muratani & Gardner and further in view of Nouri.

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optimization algorithms, at the time the invention was made such technology was well known in the art. In particular, Gardner provides a standard teaching of system which tracks configuration parameters of a headend and accordingly, makes dynamic adjustments and reallocations of servers assets, (col. 1, lines 58-65; col. 4, lines 14-58; col. 11, lines 61-68; col. 13, lines 42-55). It would have been obvious for one of ordinary skill in the art at the time the invention was made to modify Clark, with a server reconfiguration algorithm, for the desirable benefit of a more efficient video delivery system, as taught by Gardner.

Regarding the amended claimed feature of modifying the schedule information at the master scheduler, and transmitting the modified schedule to a program guide system and to a business support system. As discussed in the rejection of claim 3, Clark teaches transmitting a schedule of programs derived in the Exhibition Schedule Manger 300, which may be embodied within a master scheduler 20, to computer 64 over a PSTN. It would have been obvious to transmit the schedule of programs to a billing support system, for the desirable purpose of accurately billing customers for services performed by the system of Clark. Such a feature does not represent a novel nor an unobvious technique, at the time the invention was made.

Regarding claim 22-23, Gardner extensively discusses the monitoring of asset and resource performance, with respect to established maximum expected performance of the instant assets, (col. 6, lines 41-55; col. 12, lines 49-55).

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Regarding claims 15-16 & 19-20, the master scheduler 20 of Clark provides a GUI for an operator to edit and modify a programming transmission schedule and Gardner discusses monitoring the status of assets at a server, but does not specifically show a GUI in order to view the status of assets. Nevertheless, Nouri discloses a means for an operator to view the status or condition of various assets at a server. It would have been obvious for one of ordinary skill in the art at the time the invention was made, to modify the combination of Clark, Davis & Gardner, with the disclosure of Nouri, providing operators with a visual/graphical display of the status of various components of the server, at least for the desirable improvement of enabling the operator to more readily and efficiently adjust parameters of the system.

### *Conclusion*

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

A) Egendorf Discloses a billing method wherein customers are charged various rates based upon various factors, such as the particular service chosen, see col. 2, lines 39-50 & col. 3, lines 15-60.

B) Green Teaches that a particular frequency may be used for testing a device within a CATV server, col.13, lines 40-50.

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Any inquiry concerning this communication or earlier communications from the examiner  
should be directed to Reuben Brown whose telephone number is (703) 305-2399. The examiner  
can normally be reached on M-Th from 8:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor,  
Andrew Faile, can be reached on (703) 305-4380.

Any inquiry of a general nature or relating to the status of this application or proceeding  
should be directed to the Group receptionist whose telephone number is (703) 305-4700.



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